

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

HANA HAQUE,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,

Defendants.

)
) 3:19-cv-05417-BHS
)
) Tacoma, Washington
)
) September 13, 2021
)
) Pretrial
) Conference
)
) 2:30 p.m.
)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE

Proceedings stenographically reported and transcript
produced with computer-aided technology

APPEARANCES

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AFTERNOON SESSION

SEPTEMBER 13, 2021

THE CLERK: Hana Haque versus Amtrak, Cause No.
19-05417-BHS.

Counsel, please make an appearance.

MR. LEVY: Scott Levy on behalf of the plaintiff,
Hana Haque. Good afternoon, Your Honor.

MS. OREHOSKI: Karen Orehoski on behalf of the
plaintiff.

MR. YATES: Andrew Yates for Defendant Amtrak,
Your Honor.

THE COURT: Good afternoon, everyone.

As I think you know when you are observing the newest
general order concerning COVID entered by Chief Judge
Martinez, it indicates that even if vaccinated, masks are
required in the courtroom except when speaking. Because I
interact in some hearings, especially this kind, I have this
plexiglass up here and I am vaccinated, I will have my mask
off.

I want to begin this pretrial conference by going over the
motions in limine. I will begin with Plaintiff Haque. We
have had discussion in chambers as to whether it is Haque or
Haque. I guess that has been resolved. It is Haque,
correct?

MR. LEVY: My understanding is it is "hawk" like --

1 THE COURT: I don't think that was offered as an
2 alternative. I was following the rule from grade school that
3 if the vowel is followed within two letters of another vowel,
4 then it is long. I will have it right, Haque.

5 The first one is to exclude evidence not produced in
6 discovery. This, of course, is a general rule. The Court
7 will reserve ruling on this, depending on the facts and
8 circumstances during the trial.

9 The parties are directed to provide, on the eve of each
10 trial day, the witnesses and documents that the proposing
11 party intends to put into evidence. Any objection based upon
12 the fact the evidence was not produced in discovery shall be
13 made and the argument taken before such evidence is offered.

14 No. 2, to exclude expert testimony not previously
15 disclosed. This is stipulated to and granted. Applies, of
16 course, to both parties.

17 Exclude reference to collateral sources. It is my
18 understanding that all medical bills submitted to Amtrak have
19 been paid. Amtrak may inform the jury of this fact.

20 Now, I make that statement. I am not confident that all
21 medical bills have been paid. This crops up as an issue
22 again later on. I would like to understand where we are with
23 respect to that. I have had, of course, a couple of other
24 Amtrak cases in which all medical bills were paid, and the
25 jury was informed as to the extent of medical bills and that

1 they were paid so those things could be factored in, in
2 arriving at damages.

3 Where are we? Are there some outstanding medical bills
4 that are controverted?

5 MR. LEVY: Your Honor, may I be heard?

6 THE COURT: Yes.

7 MR. LEVY: The plaintiff -- there is a mistake in the
8 pretrial order. Plaintiff has decided that they are no
9 longer seeking damages for past medical bills.

10 As to your original question as to whether all of the
11 bills had been paid by Amtrak, I don't think they all have.

12 In any event, plaintiff is no longer pursuing the past
13 medical damages. As a result, our position is that any
14 reference to Amtrak paying those bills or offering to pay
15 those bills is not relevant to any issue in this case any
16 more and would only be prejudicial. Plaintiff's view would
17 be to ask the Court to preclude any mention of Amtrak
18 offering to pay or paying any medical bills.

19 THE COURT: Mr. Yates.

20 MR. YATES: Your Honor, we have been working this out
21 with Mr. Levy. I don't think at this point we intend to
22 offer that we paid past medical specials. The one caveat to
23 that, if I heard Mr. Levy correctly when we were talking
24 before, they may intend to offer some recent past medical
25 bills that have not been presented to Amtrak to try to

1 establish the reasonable value of future medical care. We do
2 have a number of objections to that. I don't know if the
3 Court would like to hear argument on that now or at a
4 different point.

5 THE COURT: Let's go ahead and hear that now. I
6 don't want this to crop up during the trial, this issue about
7 paying medical bills. It was my understanding that there
8 would be some mention of medical bills have all been resolved
9 of some kind or another so the jury is not wondering or
10 thinking about and they wouldn't have instructions about
11 medical bills, but when arriving at damages and people are
12 talking about future medical bills and so forth, I think
13 there is a peril that they could confuse all that information
14 and think they have to make some sort of award for special
15 damages as part of the general damages.

16 I don't see how it is prejudicial to either side. Just
17 makes clarification that past incurred medical bills are not
18 being sought, at least some sort of information to the jury
19 on that basis.

20 MR. YATES: We think some instruction to the jury
21 along those lines would be appropriate.

22 MR. LEVY: That is fine with plaintiff, Your Honor.

23 THE COURT: Then with respect to future medical
24 bills, there is an issue there?

25 MR. YATES: Yes. So my understanding, Your Honor,

1 plaintiff has recently resumed care --

2 THE COURT: By the way, you can remove the mask if
3 you like. It is optional.

4 MR. YATES: I would prefer to do so. I am fully
5 vaccinated and have been for some time.

6 THE COURT: You can remove while addressing the
7 Court. It is easier to hear.

8 MR. YATES: I have been told that the plaintiff
9 intends to offer some billing from a recent mental health
10 counselor as part of their effort to establish the reasonable
11 value of what they think are future medical care.

12 We have a number of objections to this. The first one is
13 plaintiff has testified herself that she doesn't need any
14 more medical treatment. No future care is within the charts
15 of anybody that she has seen, so it can't be supported for
16 that reason. They don't have a life care planner or an
17 economist that could put a value on those services and then
18 reduce them to present value for services that are going to
19 extend out over time. For simple lack of evidentiary support,
20 they simply shouldn't be allowed in this case.

21 MR. LEVY: Your Honor, Amtrak is correct. The
22 plaintiff is seeking the reasonable value of future medical
23 care.

24 The plaintiff is currently in mental health treatment.
25 She is seeing a therapist on an ongoing, weekly basis.

1 Our expectation is there will be testimony at trial to
2 support ongoing future medical care related to her mental
3 health. That is why we do seek to admit the bills for
4 Mr. Barone, who is her current mental health treater, and
5 have him discuss the bills and discuss whether it be
6 reasonably necessary for her to get mental health treatment
7 in the future.

8 THE COURT: So you are going to make a request for
9 medical bills as relates to these? Not just future, but
10 present?

11 MR. LEVY: No, Your Honor. The plaintiff intends to
12 talk to Mr. Barone and use his billing records as evidence of
13 what the reasonable care -- the reasonable value of care
14 would be in the future.

15 THE COURT: When did this occur that he produced
16 this? This is a discovery issue well, is it not?

17 MR. YATES: It is, Your Honor. This was all long
18 after the discovery cut off.

19 MR. LEVY: I don't know if I want to get sidetracked
20 and discuss the issue on discovery cutoff. Because the
21 plaintiff is still treating, she started seeing this mental
22 health provider in February and is still treating with the
23 provider, right when we got the records about a week and a
24 half ago, we produced those records immediately to Amtrak.

25 THE COURT: All right. I have permitted before,

1 Mr. Yates knows this, I permitted before where there has been
2 ongoing continuing treatment to have healthcare providers
3 provide updates. There is enough time here to take a
4 deposition, Mr. Yates, if you need to, of this additional
5 information.

6 MR. YATES: Yes. Your Honor, it is not so much an
7 issue of ongoing medical care. If she is seeing this
8 treater, she's seeing this treater. It is that we didn't
9 know it was -- that they were going to use past bills to try
10 to establish future bills. It is sort of an evidentiary and
11 discovery issue. There is no foundational support for it
12 because she herself has testified she doesn't need any more
13 treatment and they don't have somebody who can come in and
14 put a value on this.

15 Mr. Barone is a licensed mental health counselor. He
16 can't come in and give an opinion about the reasonable value
17 of these bills.

18 THE COURT: He can give an opinion as to his own
19 bills, whether they are reasonable and medically necessary.

20 MR. YATES: He can't talk about what she might need
21 from somebody else in the future.

22 THE COURT: That sounds like a problem, all right.

23 MR. LEVY: From the plaintiff's perspective, the
24 plaintiff is 22 years old. At the time she was deposed, she
25 wasn't in mental health treatment. She's fluctuated, her

1 symptoms have gone and up down since this train accident. At
2 the current time, she's in mental health treatment, and I
3 think it is appropriate for plaintiff to be allowed to ask
4 the witness -- the treating witness if the plaintiff will
5 need -- if there is a reasonable probability this plaintiff
6 will need future medical care.

7 THE COURT: From him or someone else?

8 MR. LEVY: Him.

9 THE COURT: We are talking about his own medical
10 bills?

11 MR. YATES: This is the first I am hearing of that.
12 If so, that may be the case. The way it has been represented
13 to us prior is that it is sort of a nebulous, she's going to
14 need future mental health care and I think it is going to
15 cost this much. He can't say what a psychologist or
16 psychiatrist or neuropsychiatrist or speech language
17 pathologist might charge or might do because that is far
18 outside the scope of his expertise.

19 THE COURT: I think he can testify if these are --
20 again, these are not experts that require the report of a
21 treating physician. If they form the opinion at the time of
22 treatment -- if he had an opinion she needs to come back and
23 reasonably can project over the next three or four years or
24 whatever he thinks, and he formulated that, and he can talk
25 about what his hourly rate is, I think that is probably the

1 limit of what can be done here.

2 MR. YATES: We still have the issue they don't have
3 an economist to discount anything too far out in the future.

4 THE COURT: All right.

5 MR. LEVY: Can I be heard on that issue?

6 THE COURT: Yes.

7 MR. LEVY: We have a proposed jury instruction on
8 this. I think the Washington panel instructions covered this
9 situation instructing jurors to put everything in present
10 value and referring them to a table that has been produced by
11 the State of Washington Office of Insurance from their
12 website.

13 THE COURT: How long are we talking about that you
14 are going to be expecting this witness to indicate she needs
15 additional counseling? How many years?

16 MR. LEVY: Well --

17 THE COURT: Months?

18 MR. LEVY: We would like to ask Mr. Barone that. I
19 am not sure what Mr. Barone will testify to.

20 THE COURT: You don't know at this point even?

21 MR. LEVY: We said in our recent 26(a) disclosure on
22 the damages calculation, we expected the plaintiff to seek
23 therapy every other week for the remainder of her life, which
24 would be 60 years. Remains to be seen what Mr. Barone will
25 testify to.

1 MR. YATES: This is the problem, Your Honor. That
2 kind of thing hasn't been disclosed to us.

3 THE COURT: That's pretty significant.

4 MR. LEVY: What hasn't been disclosed?

5 THE COURT: She's looking at lifelong counseling
6 every other week. That is a significant bit of new
7 information.

8 MR. LEVY: Oh, no, this was disclosed to defendant a
9 long time ago.

10 MR. YATES: It is possible it has been made as a
11 claim. I haven't seen any evidentiary support for it. As we
12 have agreed, we just got Mr. Barone's records about a week
13 ago.

14 THE COURT: You have an obligation to -- continuing
15 obligation under Rule 26 to provide this discovery. You
16 expected to be able to come in here without ever furnishing
17 them with evidence of lifetime counseling and how much it is
18 going to cost?

19 MR. LEVY: We have produced the records we got from
20 Dr. Barone (sic) that indicate she needs ongoing weekly
21 therapy. We then intend to ask Mr. Barone at trial what sort
22 of future medical mental health needs she needs.

23 MR. YATES: He's not qualified to talk about what
24 she's going to need 40, 50, 60 years from now.

25 THE COURT: I don't know that he is either. That is

1 a foundation question. Foundation will have to be laid that
2 he can do that. It may be a matter of cross-examination.
3 This is rather late in the day to be talking about what could
4 represent tens of thousands of dollars.

5 MR. LEVY: I understand, Your Honor.

6 MR. YATES: They have no economist that can reduce it
7 to present value. Having the jury do that calculation isn't
8 appropriate. That's why we have economists.

9 THE COURT: You don't have an economist?

10 MR. LEVY: I understand.

11 THE COURT: How are you going to get this in,
12 recognizing that these damages must be discounted to present
13 value?

14 MR. LEVY: Of course, Your Honor. Plaintiff's
15 Proposed Exhibit No. 30 -- excuse me, Plaintiff's Exhibit 30
16 is the present value table taken from the Office of the
17 Insurance Commissioner for the State of Washington. I
18 believe that is a self-authenticating document because it is
19 an official publication of the office. It tells you exactly
20 what to do. If you use the present value table, and you use
21 that in addition to the jury instruction that we proposed, I
22 don't think it is necessary to have an economist in this
23 case.

24 THE COURT: You are going to have to show me
25 authority that that is adequate to submit to the jury for

1 calculation.

2 MR. LEVY: Okay. I don't have that off the top of my
3 head, Your Honor.

4 MR. LANDMAN: Your Honor, I apologize for
5 interrupting. This is Mark Landman, also counsel for Amtrak.
6 We can cut through this, if I can have a moment to make one
7 point.

8 THE COURT: I didn't know you were on, Mr. Landman.
9 Good afternoon.

10 MR. LANDMAN: Good afternoon, Your Honor. How have
11 you been?

12 THE COURT: I am fine. Thank you. The procedure
13 succeeded.

14 MR. LANDMAN: Good. Good. It is good to hear your
15 voice and everyone getting back in the saddle.

16 Your Honor, just cutting right through this, here is I
17 think the critical point: There is nothing in Mr. Barone's
18 records that we have been provided that suggest anywhere that
19 Ms. Haque will need 60 years of treatment. In fact, the only
20 thing in his record is the continuation of treatment will
21 either be for six months or one year from the time he first
22 started treating her in February or March of this year. There
23 has been no disclosure whatsoever to support this.

24 We don't need to get to the issue of economists,
25 discounted present value. There has been no disclosure by

1 any person, medical person or even Mr. Barone, that she will
2 need the 60 years of treatment. That is solely something the
3 plaintiffs put in the disclosure, but we don't have any
4 record from Mr. Barone that says that. They have no expert
5 disclosure in this case. There is just no basis whatsoever
6 that we could have been prepared to respond to that.

7 THE COURT: Apparently, Ms. Haque herself indicated
8 she's not seeking that, apparently in a deposition?

9 MR. YATES: That's true.

10 MR. PETRU: Your Honor, allow me to introduce myself.
11 My name is Anthony Petru with Mr. Levy for plaintiff on this
12 matter.

13 There is a bit of a disconnect here. I think the evidence
14 will bear out that at the time of her deposition, she wasn't
15 in treatment. At that time, I think she was a 21-year-old or
16 20-year-old who, like many young people who are the subject
17 of a traumatic incident like this, don't know what the course
18 is going to be. It turns out that she, at that time, had
19 just come back from traveling, was not in therapy at that
20 time, but found she needed therapy again.

21 The testimony will be, and I expect it will be from all
22 the providers, is people who have suffered traumatic
23 incidents like this who have PTSD or a general anxiety
24 disorder associated with a traumatic event will need
25 counseling periodically. It is in the records. In fact,

1 from the very early records there is an indication she's to
2 come back on a PRN basis.

3 What we can't do is quantify exactly right now what that
4 frequency is going to be. That's going to have to be what
5 Mr. Barone testifies to.

6 As the Court indicated, if they want to take his
7 deposition, they can have more detailed information at the
8 time of trial, or I can contact Mr. Barone and find out what
9 he is going to testify to specifically with regard to how
10 frequently in the future.

11 What is clear is she's going to require access to therapy.
12 She is now three and a half, almost four years post-incident
13 and still suffers the sequela and symptoms associated with
14 her exposures. The probability is that she will continue to
15 have those experiences; when and the frequency she needs
16 therapy is the subject of examination of Mr. Barone.

17 THE COURT: When was her deposition --

18 MR. LANDMAN: Your Honor, briefly --

19 THE COURT: When was her deposition taken?

20 MR. PETRU: January of 2020.

21 THE COURT: So we are a year and a half out from
22 that. There was no -- at that time, she said she was not
23 going to be seeking any future medical assistance. Yet, you
24 had an obligation, she had an obligation through you to
25 disclose that that information had changed. They are just

1 learning it a week and a half ago?

2 MR. PETRU: No. I'm sorry, Your Honor. We shared
3 with them that had changed some time ago. Both plaintiff and
4 defense have had a very difficult time getting Mr. Barone's
5 records. We got them and shared them with the defense the
6 same day we received them. They knew she was in therapy and
7 knew she had been in therapy for couple of months now. I
8 can't give you the exact date. We didn't sit on it. We
9 shared it as soon as we knew about it, Your Honor.

10 MR. LANDMAN: If I can respond very briefly.
11 Mark Landman.

12 I think Mr. Petru's statement itself tells everything we
13 need to know about why this is prejudicial to the defendant
14 because Mr. Petru said, "We can contact Mr. Barone and ask
15 him how long she will need treatment for in the future."

16 If it is not in his records and they don't even know it,
17 how can we possibly know it and prepare for trial in two
18 weeks based upon that?

19 MR. PETRU: If you don't mind my response directly,
20 Your Honor. That's not quite what I said. I said there is a
21 need for access -- there will be a need for access in the
22 future. I don't have the specific number that he gave us. I
23 can find out so that counsel can maybe take his deposition.

24 We need to try this case on its facts and merits. Defense
25 has the right to know this information and they need to know

1 it now, and we will do what we can to get it to them.

2 THE COURT: The complexion of the case seems to have
3 changed considerably in terms of future medical expenses.

4 I will allow Amtrak to take Barone's deposition at the
5 expense of plaintiff and reserve ruling on this.

6 If Amtrak believes it has been prejudiced unfairly with
7 regard to this issue, it can renew or it can make the motion
8 to strike any testimony concerning future medical expenses.

9 The parties are going to have to do simultaneous briefs on
10 this. We have a short time, obviously. I think in COVID
11 time, this can be set up quickly through Zoom, and then
12 followed with simultaneous briefing on the question of
13 whether, after this deposition was taken, Amtrak finds that
14 it has been unfairly prejudiced from which it cannot
15 adequately prepare for trial.

16 MR. LEVY: Your Honor, if I may. Where would the
17 prejudice be coming from? Are you talking about from delay?

18 THE COURT: Prejudice from having -- not having the
19 ability to respond to your information, one. Two, to develop
20 this question of discounted to present value.

21 MR. LEVY: Understood.

22 THE COURT: We are excluding expert testimony not
23 previously disclosed. We talked about the collateral source
24 rule already. There is no need to make any reference to
25 collateral sources here.

1 No. 4, exclude reference to time or manner of attorney
2 retention. This was agreed to by Amtrak, except it may seek
3 to admit evidence of timing to see certain providers in
4 relation to time of hiring an attorney. This kind of
5 evidence is marginally relevant, but under 403 the propensity
6 to confuse or mislead the jury makes it more unfairly
7 prejudicial than it is probative. That motion is granted.

8 No. 5 is to exclude reference to location of attorney's
9 law firm. That's agreed to and granted.

10 No. 6 is exclude reference to tax on discovery. I have
11 not only allowed this information to be communicated to a
12 jury, but also given an instruction on it. I received once a
13 juror question about taxability and I answered it consistent
14 with the law. That is, that the award will not be taxed.
15 That is the law as I understand it presently. Otherwise, a
16 jury could gross up its calculation to include some
17 speculated amount that will have to be paid and thereby
18 reduce plaintiff's compensation. That is denied without
19 prejudice.

20 If plaintiff can come and show me in some ways, under some
21 law, state or federal law, that this would be taxable, then
22 you can renew the motion. Everything that I have been
23 instructed on with regard to taxability is this is not
24 taxable.

25 I think the juror question that I got once is

1 demonstrative of the fact that these are matters that are
2 confusing to a jury. I don't think they should be
3 speculating about whether their award should take into
4 consideration taxability.

5 Exclude reference to the absence of parties or witnesses.
6 The Court follows the general rule that it is improper to
7 comment on the absence of a witness to allow an inference
8 that such witnesses' testimony would be adverse to the other
9 party where such witness is available to either party to
10 testify.

11 While it can have some arguable relevance in some cases,
12 the unfair prejudice to the other party is outweighed by any
13 probative value. Plaintiff has the burden of proving her
14 injuries and medical prognosis and treatment. Failure to
15 call all treatment providers is actually encouraged by the
16 Court where such testimony is cumulative or mostly
17 cumulative. The motion there is granted.

18 No. 8 is exclude evidence of preexisting conditions. The
19 Court reserves ruling on this motion. It is correct that a
20 witness may not speculate. It is permissible, if in good
21 faith the defense has evidence that some part of her
22 physical, mental or emotional condition today can be tied in
23 part to other events or causes. The Court will reserve ruling
24 on that one.

25 No. 9 is exclude evidence of defendant's good character or

1 other good acts. That issue was tied up in really the
2 question of paying the medical bills. We have already
3 discussed that. The jury should be informed that the medical
4 bills are not an issue in this case and have been paid.
5 Doesn't need to indicate who paid, only that it is not a
6 concern for them.

7 Amtrak's motions begin with, No. 1, exclude evidence of
8 Amtrak's liability. In previous Dupont derailment cases, the
9 Court has excluded evidence regarding liability. However, it
10 has also allowed some evidence relevant to emotional and
11 psychological damages that pertain to the speed and force of
12 the derailment as well as a limited number of photos to
13 demonstrate the magnitude of the aftermath of the derailment.

14 Here, plaintiff is expected to testify as to what she
15 observed when she regained consciousness. That has relevance
16 to her claims for emotional and psychological damages.

17 I am concerned about admitting testimony of an Amtrak
18 employee who will expected to be called to testify.

19 What is relevant here is what plaintiff experienced, not
20 what someone else who had perhaps a similar experience.

21 I will reserve ruling on calling a separate witness, and
22 the admissibility will depend upon the extent to which Amtrak
23 may attempt to attack plaintiff's recall of what she
24 experienced and observed.

25 This other employee of Amtrak, to me, it is just

1 somebody -- it could be anybody else, but I don't see the
2 need for having another witness come and describe the scene.

3 MR. LEVY: May I be heard, Your Honor?

4 THE COURT: Yes.

5 MR. LEVY: The plaintiff, as Mr. Petru described, was
6 18 at the time. She was knocked unconscious in the passenger
7 car. When she came to, she noted she was outside on the
8 ground near a hill. As she made her way to the hill, she was
9 hysterical. She was not, you know -- it was a highly
10 stressful situation for her.

11 The relevance of Chris Burniger, who was an Amtrak
12 employee, Mr. Burniger was located -- he was sitting on the
13 train in a passenger car behind plaintiff. At the time of
14 the derailment, he jumped into action and started walking
15 around and helping passengers, surveying the scene and doing
16 what he could to help folks.

17 I think what Burniger will add here is a perspective of
18 somebody who wasn't quite as injured. I don't believe
19 Mr. Burniger was knocked unconscious. He also brings the
20 perspective, being an Amtrak employee, he understands the
21 speed of force, how fast the train was going. He understands
22 some details the plaintiff may not be aware of.

23 THE COURT: Mr. Yates.

24 MR. YATES: I believe Mr. Burniger had a shoulder
25 repair surgery. He was represented by Mr. Petru's firm.

1 There hasn't been any evidence or disclosure or connection
2 between Mr. Burniger and Ms. Haque whatsoever.

3 I think Your Honor correctly identified the problem with
4 this in your tentative ruling, and I would ask that you make
5 that ruling.

6 THE COURT: She had a friend that was riding with
7 her. She's expected to be a witness.

8 MR. LEVY: She's not going to be a witness.
9 Emily Torgeson is her friend. She was sitting next to Emily
10 at the time of the incident. Emily is currently in Cairo,
11 Egypt, and she's not going to be testifying in this case.

12 The plaintiff did have a falling out after the trauma, as
13 a lot of trauma survivors who witness the same trauma
14 sometimes happens, they had a falling out and are no longer
15 on speaking terms.

16 As far as the fact witnesses, the lay witnesses who would
17 be able to testify to the scene, we have three on our list, I
18 believe. We have Kyle Steel, who is another passenger who
19 was on the train who first met Plaintiff Hana at the top of
20 the hill and rode the ambulance together with her. They
21 maintained a relationship over text message for some time
22 after the derailment. The other witness is Mr. Burniger, who
23 we have discussed, and then Hana would be the third.

24 THE COURT: I am going to exclude -- how did you
25 pronounce the name?

1 MR. LEVY: Burniger.

2 THE COURT: Burniger. I am going to exclude him. I
3 think under a 403 analysis, the unfair prejudice of producing
4 an Amtrak employee who was not in the same car, apparently
5 didn't observe her, his only purpose then would be to testify
6 as to what he observed.

7 What is relevant to her psychological injury and damage is
8 what she remembers, what she recalls, and the other witness,
9 who was riding there with her, can certainly -- or was on the
10 hill with her can assist in describing the scene and how she
11 found her and those sorts of things. That is sufficient.
12 More than that, I believe, is a 403 problem.

13 MR. LEVY: Okay.

14 MR. YATES: Your Honor, may I --

15 THE COURT: Yes.

16 MR. YATES: Now that it has been confirmed that
17 plaintiff is not calling Ms. Torgeson, I have let Mr. Levy
18 know this, but we may be submitting testimony from her
19 deposition by designation in our case.

20 THE COURT: All right. If she's unavailable to
21 testify and you can meet the standard.

22 MR. YATES: She is in Cairo, Egypt.

23 THE COURT: The last part of that motion was to
24 exclude reference to Positive Train Control. That has been
25 agreed to and granted.

1 Second is exclude media reports or return to service. The
2 Court will reserve ruling on this. As a general matter, news
3 media accounts, photos and videos are not relevant. However,
4 a foundation may be laid that plaintiff viewing media reports
5 exacerbated her emotional and psychological damages. This
6 does not necessarily mean plaintiff's counsel can introduce
7 specific news media videos or reports unless the plaintiff
8 can specifically identify such report as having been seen or
9 read by her and what specific reaction it caused her to have.
10 The Court will have to be presented with such evidence
11 outside the presence of the jury. You can bring that to the
12 Court's attention in advance, and I will take up any
13 objection to the specific media account reference.

14 No. 3 is exclude reference to congressional intent. That
15 is agreed to and granted.

16 No. 4, exclude reference to motions in limine. That's
17 agreed to and therefore granted.

18 No. 5 is exclude evidence not produced in discovery. I am
19 giving the same ruling it did in plaintiff's motion. It is
20 granted.

21 No. 6 is exclude reference to discovery orders or issues.
22 That's agreed to and granted.

23 No. 7, exclude reference to Amtrak derailments, crossing
24 collision and other incidents. This was opposed by plaintiff
25 asserting that something might be offered in this area that

1 affected the plaintiff. I am skeptical, I must say, and
2 plaintiff will have to indicate, in advance of offering any
3 such evidence, to Amtrak of what it intends to present.
4 There is still a strong chance the Court would exclude it
5 under 403.

6 Can you tell me now, is there some evidence of some other
7 collision, derailment or accident that is relevant directly
8 to her emotional damage?

9 MR. LEVY: Yes, two different instances, the first
10 one is the plaintiff had a conversation -- had a relationship
11 with somebody named Tiffany Nixon, who was involved in a
12 train accident in South Carolina. They maintained a
13 relationship and discussed their traumas together, their
14 trauma from the train.

15 The second incident involving a derailment, I believe it
16 occurred someplace in Asia. This comes up in Mr. Barone's
17 mental health care records of plaintiff. The focus of
18 therapy that particular day was Hana, the plaintiff, telling
19 Mr. Barone she had seen a news story about this crash in Asia
20 and it retraumatized her and there was a discussion about
21 that.

22 THE COURT: That didn't involve Amtrak.

23 MR. LEVY: No, it does not.

24 THE COURT: I think that will be clear in the
25 testimony. That is the kind of testimony I am saying I may

1 allow.

2 MR. LEVY: The South Carolina train accident, I
3 believe, was an Amtrak derailment. The person,
4 Tiffany Nixon, who was put in contact with plaintiff is
5 somebody that Amtrak provided that information to Hana. I do
6 think Hana should be able to testify what impact talking to
7 Tiffany, the South Carolina survivor, had on her.

8 MR. YATES: Your Honor, may I be heard on this?

9 THE COURT: Yes.

10 MR. YATES: The context here is when we finally got
11 the Barone records after months and months, we reviewed them
12 and there was references to emails and text exchanges with
13 other train survivors. We asked in the first set of
14 discovery in this case for exactly such things, any
15 communications, things like that with other people that they
16 have talked to about this stuff. We heard nothing until less
17 than a week ago about this, when we specifically asked for it
18 and said, hey, looks like there may be something you haven't
19 provided. They said, we'll look into it and we will get it
20 to you.

21 They have gotten us this, but I have questions about
22 whether there are other things, including texts with
23 Ms. Steel. It is problematic that this is now being advanced
24 as a claim after we uncovered these communications after the
25 discovery cutoff.

1 THE COURT: It doesn't sound like to me it is a new
2 claim. It is all part of the claim and they are representing
3 this as being part of the psychological harm she suffered,
4 that when she has conversation with somebody, like someone
5 else who had a similar experience, it brought all the
6 nightmares back. That kind of testimony.

7 MR. YATES: It is a new witness with Ms. Smith -- or
8 the witness they just -- it is a new witness that has never
9 been on their list and identified, and also hearsay and other
10 admissibility problems for those emails.

11 THE COURT: Are you calling her as a witness or
12 having plaintiff talk about this? Actually, it is going to
13 come through Barone?

14 MR. LEVY: The South Carolina accident would come
15 through Hana, the plaintiff. She would discuss that, her
16 experience talking to the South Carolina survivor. The
17 second issue would be Hana should be entitled to talk about
18 her retraumatization after she heard the news story about a
19 crash in Asia.

20 THE COURT: I am going to allow that. With respect
21 to the South Carolina derailment, it is not hearsay. What
22 you are talking about there is not being offered for the
23 truth of the matter that this other person had this
24 experience. Rather, it was plaintiff's response to this
25 information, whether true or not.

1 She can testify concerning that conversation. Again, I
2 don't think it is excluded under 403. I don't think it is
3 unfairly prejudicial. Probably consistent with other
4 triggers that she's talked about.

5 I am going to exclude -- No. 3, exclude reference to
6 congressional intent. That's agreed to and granted. I think
7 I covered that.

8 I think I am down to No. 7, exclude reference to Amtrak
9 derailments. I covered that.

10 No. 8, exclude comparative wealth. That is agreed to and
11 granted.

12 No. 9 is exclude reference to liability insurance, which
13 is agreed to and granted.

14 No. 10 is exclude reference to NTSB report. Plaintiff
15 opposes, but does not address relevance. In what way would
16 the NTSB report be relevant in this case?

17 MR. LEVY: Your Honor, our view of defendant's motion
18 on the NTSB reports is it is overly broad. My read of the
19 cases is that the NTSB reports, the conclusions are kept out
20 but the factual part is allowed in, in the *Chevron* case, as
21 well as the *Riggs* case.

22 Amtrak didn't tell us which exhibits they sought to keep
23 out in this. I have gone through and noted the various
24 exhibits here that are NTSB-produced documents. I can go
25 through those with you, Your Honor.

1 THE COURT: Well, what are they?

2 MR. LEVY: Exhibit 9, for example, is the illustrated
3 accident diagram, which is an overhead picture of the train
4 accident identifying the various car numbers.

5 We think that is particularly relevant because the
6 plaintiff has testified that she was in a car that landed on
7 the dirt and was on its side.

8 THE COURT: I have indicated I am going to permit
9 some photos or maps, if it is from the NTSB. You are going
10 to have to work out with Amtrak which ones you want. I am
11 saying, I am going to limit those because liability is not an
12 issue. Some photos are going to be relevant to depict the
13 magnitude of this accident as relevant to the emotional and
14 psychological harm that was suffered. So I expect you to
15 work this out with Amtrak, and if there is still a dispute, I
16 will resolve it.

17 MR. LEVY: I appreciate that, Your Honor. There are
18 some documents that are not photographs that I believe are
19 facts that would be relevant and probative in this case as
20 well. One of them is our Exhibit 21, which is a table. It
21 is Train 501 characteristics. What this document is, is it
22 identifies each of the railcars that made up the train that
23 day, sequences them 1 through 14. It has the bistro car and
24 the dining car as cars 5 and 6. The first passenger car
25 behind those is Amtrak Car 7504. That's our understanding

1 from Hana's testimony, from Hana's interview at the hospital,
2 she was located in the car immediately behind the dining and
3 bistro cars.

4 We think it is relevant to have -- we think it is
5 important for the jury to be able to see the table to be able
6 to identify what car she was in.

7 The reason this is so important here is because Car 7504
8 was the most seriously damaged car in that entire train. All
9 three fatalities came out of that car. More than 60 percent
10 of the roof compressed. The survivability in that car was
11 very low. Most passengers were significantly injured there.

12 We think this document here that shows which car,
13 identifies the cars by car number and sequence, is very
14 probative and helpful in this case.

15 THE COURT: Again, I am going to let you work with
16 Amtrak. That sounds like to me the type of evidence, on a
17 limited basis, I am going to permit so the story can be told
18 as to where she was when the derailment occurred, where she
19 ended up and the damage to her car is relevant.

20 MR. LEVY: Thank you, Your Honor.

21 Before we move on, I want to see if are there any other
22 NTSB-related documents that we haven't covered here, if you
23 don't mind.

24 The only other NTSB document, Your Honor, is Exhibit 24,
25 which is an interview taken of the plaintiff at the hospital,

1 Good Samaritan Hospital by the police department.

2 Our position on that is it is admissible. We think -- it
3 was taken less than three hours after the accident. We think
4 it is admissible as an excited utterance. We think she was
5 still under the impact of that startling event at the time
6 she gave that statement. She was still in the hospital. The
7 nexus between her statement and -- the nexus between her
8 statement and the event are very clear. She was talking
9 exactly about the event and it was clearly a startling event.

10 THE COURT: Mr. Yates.

11 MR. YATES: She'll be here to testify. I don't think
12 that it is admissible on that basis. It would also need to
13 be reviewed for compliance with the Court's rulings on other
14 motions in limine.

15 As a general matter, I will say, certainly as we have done
16 in the other cases, we will work with the plaintiff and try
17 our best to come to an agreed set of exhibits that go to
18 damages.

19 One of our concerns is, of course, the difference between
20 liability evidence, which is inappropriate for the jury, and
21 argument and questioning is included in that, and evidence
22 that sets the scene, which we obviously understand the Court
23 has ruled is admissible. We will work with Mr. Levy and his
24 team on this issue.

25 THE COURT: All right. I expect you to look at that

1 document as well. This is a pretty limited request. It
2 sounds like it would qualify as excited utterance, so work
3 with him on it.

4 MR. YATES: We will, Your Honor.

5 THE COURT: Exclude punitive damages, that's agreed
6 to and granted.

7 No. 12, exclude reference to other settlement offers,
8 that's agreed to and granted.

9 Exclude the inflammatory questions, statements and
10 arguments of necessity. This motion is denied. The Court
11 will rule on any objection made relating to these concerns
12 when and if they arise.

13 No. 14 is exclude reference to fatalities. Plaintiff is
14 expected to testify to seeing a deceased man. This is
15 relevant to her pain and suffering claim. The Court will
16 defer ruling until testimony is being offered, but will
17 likely rule that it is relevant, not precluded by 403.

18 Other references to fatalities should come in an offer of
19 proof outside the presence of the jury.

20 MR. PETRU: Your Honor, this is Anthony Petru, if I
21 may interrupt. With regard to Defense No. 12, that was
22 evidence of other settlements and offers to settle
23 plaintiff's case, there is a concomative issue there where
24 they was some discussion with the therapist about wanting to
25 have the case settled. I think there is a lot of prejudice

1 that might be evoked in that if it is used incorrectly. Of
2 course, she would like to have the matter behind her. I
3 would ask the Court to be aware of that. There may be some
4 objections with regard to soliciting references in the
5 medical records where she is talking to the therapist about
6 talking to us as her attorneys to try to get the case
7 settled.

8 I am not quite sure whether the Court subsumed any
9 references to any settlement discussion, whether it is with
10 the parties directly or with the therapist. I would like to
11 have the Court comment on that, if you can.

12 THE COURT: Were you going to add something?

13 MR. LEVY: I spoke to Andy about this earlier. The
14 plaintiff did intend to file a supplementary motion in limine
15 and tell Your Honor that, speaking exactly to what Mr. Petru
16 says, the plaintiff has expressed some feelings about the
17 settlement, her desire to settle, the amount of money she
18 would accept, fear of going to trial. Things like that, we
19 think are not probative of any of the issues in the case and
20 could be considerably prejudicial. We ask that the Court
21 keep that out. We are happy to do a formal motion in limine
22 on that, if you like.

23 THE COURT: Mr. Yates, do you have any different view
24 of this?

25 MR. YATES: There is no motion on this before the

1 Court. I would say the Court should take this as it comes up
2 in trial. Certainly, I think not everything that is being
3 referenced in the record here would be admissible. I think
4 there are other things that would be and should be, depending
5 on how the evidence comes in. I think we should leave it
6 until then.

7 THE COURT: Of course, motions in limine are helpful
8 to the Court to alert the Court to evidentiary issues that
9 will expect it to arise. We now expect this could arise. I
10 want you to work it out and talk with him. From the
11 description that has been given, sounds like the sort of
12 thing that would be unfairly prejudicial to Amtrak as much as
13 to plaintiff about the desire to settle.

14 MR. YATES: Thank you, Your Honor. We will work on
15 this issue.

16 THE COURT: All right.

17 MR. PETRU: Thank you, Your Honor. Appreciate the
18 indulgence.

19 THE COURT: Moving on to 15, exclude cumulative fact
20 witnesses. The Court is concerned about too many fact
21 witnesses testifying concerning an observation of how
22 plaintiff's injuries and experience in the derailment
23 affected her emotionally, psychologically and otherwise.
24 Generally, a couple of family members and close friends is
25 sufficient unless it appears that such witnesses' testimony

1 is being attacked by Amtrak. There would then be deemed a
2 need to corroborate with additional witnesses. Plaintiff
3 intends to call Kyle Steel. We have already talked about
4 this case. Of course, she may testify.

5 Amtrak correctly referenced rule -- Local Rule 43(j) that
6 without Court approval, there should only be one expert on a
7 particular subject. Amtrak indicates it is unclear in what
8 ways the treating mental health provider will speak on
9 separate subjects and to what extent they might be
10 cumulative.

11 Response by plaintiff is not completely clear to me, so I
12 would ask counsel if you could explain to me who your
13 treatment providers are, psychological, the mental health
14 providers, and how they -- each are different and needed.

15 MR. LEVY: Of course, Your Honor.

16 MR. PETRU: Scott, do you want me to do it?

17 MR. LEVY: I think I can do it. Sorry it wasn't more
18 clear in the papers.

19 The first mental health treater the plaintiff saw was
20 Willow Meyers. The plaintiff saw Willow Meyers right after
21 the incident in 2018, January of 2018. She diagnosed the
22 plaintiff with PTSD after a long assessment. Willow Meyers
23 is the person we talked about earlier. She's going to be put
24 on by deposition transcript.

25 The next mental health care provider is somebody named

1 Phil Burns. The plaintiff saw Phil Burns in 2019 for about
2 ten visits. He continued to notice the impact of the trauma
3 on the plaintiff. What is important about his testimony is
4 that it comes a year and a half after the incident. It shows
5 the plaintiff is still suffering from these symptoms.

6 The last mental health care provider the plaintiff intends
7 to call is Mr. Mark Barone. Mark Barone is the current
8 treating provider for plaintiff. Mr. Barone has diagnosed
9 Hana Haque with a general anxiety disorder. He believes many
10 of her symptoms are directly related to the train accident.
11 Plaintiff began seeing Mr. Barone in 2021.

12 There is no overlap as far as the time frame. The first
13 treater diagnosed her with PTSD. There was a treater in the
14 middle who treated her in college. Now she is seeing
15 Mr. Barone, who diagnosed her with a general anxiety
16 disorder.

17 THE COURT: That's a sufficient explanation for the
18 Court because they are sequential health care providers, not
19 technical experts, which the rule is really addressed to. I
20 don't have a concern about those three.

21 MR. LEVY: Thank you, Your Honor.

22 THE COURT: The last was to exclude all unpaid
23 medical expenses. We have already talked about that subject.
24 That completes the Court's ruling on motions in limine.

25 Jury selection, there will be eight jurors selected. I

1 have had some suggestion internally here about whether jury
2 selection should be done through Zoom or in person. As of
3 right now, I believe in-person jury selection is certainly
4 workable and doable. We will have the prospective number of
5 jurors, around 24 -- Gretchen, is that about right?

6 THE CLERK: 26.

7 THE COURT: We can have them distanced, socially
8 distanced, and they'll be wearing masks, again, until they
9 are spoken to and then they can remove the mask when
10 responding.

11 Let me just ask the parties to comment on the Court's plan
12 to do the jury selection in person.

13 MR. LEVY: Plaintiff agrees with Your Honor's plan.

14 MR. YATES: As does defendant.

15 THE COURT: All right. I might add my colleagues
16 have done jury selection through Zoom and they speak of it
17 highly saying you can actually see straight on a juror and in
18 some respects they think it is preferable. I am just enough
19 old school to believe that it is going to operate better, we
20 have a better jury selection process and voir dire if they
21 are here in court and not at home sitting in their bedroom
22 responding.

23 The jury selection process will begin with, I put a chart
24 in the front of the courtroom here that asks the jurors to
25 introduce themselves to each other and to us, asks them about

1 where they live, occupation, family, hobbies and interests.

2 After they do that, then I will conduct voir dire. I will
3 go through the questions you have been provided, the
4 questions that I will be asking, and when I have completed my
5 questions, I am going to give 20 minutes to each side to
6 conduct voir dire.

7 I looked at the proposed voir dire questions. With
8 respect to the plaintiff's, there are two that I don't want
9 the plaintiff to pursue. One is No. 5, does anyone have any
10 concerns that plaintiff only has to prove her damages by a
11 preponderance of evidence? They won't yet have been given
12 the instruction on what a preponderance of evidence is. I
13 can see this leading into questions coming back. I don't
14 think it is a significant area of concern.

15 The other one is No. 15, do you feel emotional or
16 psychological injuries are as important as physical injuries?
17 I don't know how I would answer that question. In one
18 manner, the emotional, psychological injuries are just as
19 important. In some cases, they are more important. I
20 just -- I don't want the inference drawn in any way one way
21 or the other there. I know what you are trying to drive at.

22 MR. PETRU: Your Honor, this is Anthony Petru. I
23 understand the Court's concern. However, part of our task
24 here is to weed out those potential jurors who don't believe
25 that emotional injuries or emotional distress are worthy of

1 the same compensation as physical pain. Some people just
2 don't believe it. How are we going to find that out if we
3 can't ask the question? I would certainly prefer the Court
4 ask those questions.

5 THE COURT: I think the way you phrased it was better
6 than the way it is in the question here.

7 MR. PETRU: I am happy to do that. I am happy to do
8 that during my precious 20 minutes. I find sometimes, I
9 don't know, this is a case of emotional distress. There is a
10 physical injury that is relatively minor in the big picture,
11 elbow injury, hit in the head and a cut. The biggest part
12 here is the emotional trauma she suffered and the PTSD and
13 anxiety she carries forward. I want to make sure the jurors
14 understand, as the law understands, that those are equally
15 compensable to physical pain based on the evidence.

16 THE COURT: All right. I think you can phrase it in
17 a way I am going to be satisfied with. I don't want them to
18 be left that they are the same, because they can be
19 different.

20 MR. PETRU: They are different.

21 THE COURT: Yeah. All right. With respect to
22 Amtrak's No. 27, how would you generally characterize the
23 frequency with which you have used the health care industry,
24 including doctors, hospitals and other providers? I think
25 that is too invasive or potentially offensive. I don't think

1 it is very probative, frankly. That one, I would ask you not
2 to ask of the jurors.

3 MR. PETRU: What number is that?

4 THE COURT: No. 27.

5 MR. PETRU: Thank you.

6 THE COURT: So then after you have completed your
7 voir dire process, then we will take up the excusal for
8 cause, challenge for cause. I am pretty generous on excusing
9 for cause where there are hardships. We try to screen for
10 hardships before they come into the courtroom for the
11 selection process. I inevitably find somebody has a parent
12 at home they are taking care of, some young child, they have
13 a trip planned of some kind. I will encourage excusing them
14 for cause.

15 After taking up those, we will do the peremptory
16 challenges, that will be three for each side. We will have
17 eight jurors. You may end up striking the same jurors because
18 I am going to ask you to make your strikes, once you complete
19 the process, share with opposing counsel. As I said, you may
20 end up finding you have stricken one or more common jurors.
21 Then I will ask you -- I'll have the jury composition in
22 front of me and I'll ask if this is the jury you have
23 selected.

24 Any questions about jury selection?

25 MR. PETRU: Just to be clear, the strikes, once we

1 have the jury whittled down for any rulings the Court makes
2 on cause, they would be to the first -- I guess it would be
3 the first 14 jurors, first eight would be who survived out of
4 the 14.

5 THE COURT: That is correct.

6 MR. PETRU: Okay. Sometimes I just want to say it to
7 make sure.

8 THE COURT: I have also had distributed to you the
9 preliminary jury instructions, which are standard model
10 instructions from the circuit. No. 2 is the Court employed
11 the parties' statement of the case there. Any comments about
12 preliminary jury instructions?

13 MR. LEVY: No, Your Honor.

14 MR. YATES: No, Your Honor.

15 THE COURT: I have also talked about the importance
16 of, on the eve of each trial day, for the party who is
17 currently presenting to give to the other side a list of
18 witnesses and documents that they expect the witnesses to
19 testify to.

20 The trial day begins at 9:00 and ends at 4:30 with a noon
21 recess between 12:00 and 1:30. 15-minute recess in the
22 mid-morning and mid-afternoon. Mid-morning is usually around
23 10:30. The afternoon, typically around three. I will move
24 that sometimes a little bit in order to complete a witness or
25 for other reasons.

1 If there is an objection that I think needs to be taken up
2 outside the presence of the jury, I may do that when the
3 objection is raised or I may defer until the next recess, if
4 it can be handled better that way. I don't do sidebars. If
5 we are going to take up an objection outside the presence of
6 the jury, they will be excused. We will not be using the
7 jury room to ex -- when they are excused, we are going to use
8 the adjacent courtroom where there is more space available,
9 healthier situation there.

10 I think that covers what I wanted to talk about. Any
11 questions or concerns?

12 MR. LEVY: No concerns --

13 MR. PETRU: Your Honor --

14 THE COURT: Yes.

15 MR. PETRU: Sorry, Scott. Your Honor, based on your
16 experience, would we expect we would have the jury selected,
17 opening statements and have one or two witnesses ready the
18 first day? That is always a hard thing for plaintiff to
19 gauge, particularly when you have people that are
20 professionals.

21 THE COURT: Typically I -- in this case, I think I
22 may end up, let's see, this begins on the 28th?

23 MR. PETRU: Right.

24 THE COURT: I think we are going to probably have to
25 start at 1:30, so we will only have jury selection. The

1 reason that is it appears to me, though it has not been
2 confirmed, I expect it to be confirmed, I am sitting on a
3 three-judge panel for the circuit in which I will be
4 participating by Zoom. That is in the morning hours. We
5 will hear oral argument and there will be conferencing. I
6 meant to mention this possibility, not only possibility, it
7 appears to be a probability as of right now, I would say plan
8 on beginning not at 1:30 but at 1:00 for jury selection.

9 MR. PETRU: We will have witnesses on Tuesday.

10 THE COURT: I think it would be unlikely we will get
11 opening statements, but that would be good. But I don't
12 think we will get to witnesses.

13 MR. PETRU: Thank you for the heads up. We have some
14 scrambling to do.

15 THE COURT: Thank you for reminding me. I meant to
16 mention that at the outset.

17 MR. LEVY: I have a couple additional things I would
18 like to raise. The first one is Dr. Hansen, who is over in
19 Bellingham at WWU health center. He treated the plaintiff
20 after the accident, diagnosed her with a concussion. He's
21 made the request he testify by video. I have raised this
22 with Amtrak. I am not sure of their position on it yet. I
23 did want to raise it with the Court. Dr. Hansen has told me
24 he is concerned about COVID. That is primarily the reason he
25 prefers to testify by video.

1 THE COURT: I expect the parties to work out
2 testimony by video. I think it works reasonably well, not
3 withstanding my other statements about jury selection. We
4 have a large screen here. Each of the jurors have their own
5 individual screens they can view. I would encourage Amtrak
6 to agree.

7 MR. YATES: We are in agreement with respect to that,
8 Your Honor. We may have a discussion, I'll have it
9 separately with Mr. Levy about our cumulative motion on
10 treaters.

11 THE COURT: Okay.

12 MR. YATES: I will talk to him about that.

13 THE COURT: You had a couple matters.

14 MR. LEVY: Yes. Your Honor, I also have some
15 additional motions in limine that did not make their way into
16 the writing I can address with you now or --

17 THE COURT: Why didn't they?

18 MR. LEVY: Some of them just came about after. Some
19 of them we didn't think about until after we talked to the
20 witness.

21 THE COURT: Let's hear them. As I said, it is better
22 to know these things in advance of trial. If Amtrak needs
23 some time to respond in writing, we can do that.

24 MR. LEVY: Appreciate it, Your Honor. The first one
25 is Jocelyn Doherty, who is a lay witness. Jocelyn lived with

1 Hana before and after the accident. She has an employment
2 history that includes working at a gentlemen's club as a
3 dancer and a web cam model. I think it is just not relevant,
4 her employment history here, and potentially pretty
5 prejudicial.

6 THE COURT: She's going to testify concerning what?

7 MR. LEVY: She's going to testify to the changes she
8 has seen in Hana. She's essentially an adopted sister of
9 Hana's. She's seen significant changes in Hana's personality
10 and behavior since the accident.

11 THE COURT: You heard what I was saying about lay
12 witnesses. There is going to be some limitation on those. I
13 don't want to see a redundancy, unless Amtrak is challenging
14 in substance the -- what is being testified to regarding
15 their observations of the plaintiff.

16 MR. LEVY: Understood.

17 MR. PETRU: This is Anthony Petru. We are very aware
18 of the issue with potential redundancy. In terms of friends
19 and acquaintances, Jocelyn is the only friend or acquaintance
20 who is a before-and-after witness outside of Hana's parents.
21 That is essentially it for lay witnesses. Kyle, who was the
22 woman who saw her on the hill, will testify with regard to
23 her observation, but she certainly isn't a before and after,
24 just an after.

25 THE COURT: That sounds fine. Mr. Yates, do you want

1 to respond to this? Sounds like to me that would be not
2 relevant, and even if marginally relevant, only to embarrass
3 the witness.

4 MR. YATES: Right. Your Honor, I am inclined to
5 agree. We would have liked to have been able to evaluate the
6 motion to respond in writing. I don't think it is going to
7 present an issue. I will confirm that with the rest of our
8 team. I don't anticipate that being an issue at trial.

9 THE COURT: All right.

10 MR. LEVY: The last one is there is several
11 references in the medical records to plaintiff using
12 cannabis; we would like to keep that out as well. There is
13 also a reference in the academic transcripts that defendant
14 has on their exhibit list, an incident in college where an RA
15 came by and the plaintiff was smoking or somebody in the
16 plaintiff's room was smoking a joint. There was some
17 discipline for that. That episode, I think, has no bearing
18 here and any reference to her drug use, which is totally
19 normal for a kid her age, we think that should all be
20 excluded.

21 THE COURT: You have said two different things,
22 marijuana and drug use.

23 MR. LEVY: By drug use, I meant marijuana.

24 THE COURT: Mr. Yates.

25 MR. YATES: I actually believe there was some

1 Adderall or Ritalin use. I will have to check the records on
2 that.

3 What I would say, Your Honor, what I -- I think our
4 position is going to have to depend on the plaintiff's
5 testimony a little bit. What I anticipate is there will be
6 testimony that after this incident, there was some problems
7 with school and a disruption in that.

8 If that's the case, we may want to explore other reasons
9 why there was disruption in her academic engagement.

10 Again, I will talk to our team about that and Mr. Levy and
11 try to work something out. This one is more nuanced based on
12 what I expect the plaintiff's testimony to be.

13 THE COURT: All right.

14 Any opportunity to settle this? I assume you have had
15 settlement discussions.

16 MR. YATES: We have. We, in fact, are having another
17 mediation on Saturday.

18 THE COURT: All right. Well, it will allow the Court
19 to take, then, the next trial that I have, which right now I
20 am having to tell them that this case is going to probably
21 bump them. As soon as you have word, you will, of course,
22 let us know.

23 MR. YATES: We will, Your Honor.

24 MR. PETRU: Of course.

25 THE COURT: Thank you. We'll be in recess.

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(Recessed .)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ Angela Nicolavo

ANGELA NICOLAVO
COURT REPORTER